

ORDINANCE NO. 30

Series 1996

AN ORDINANCE AMENDING THE BRECKENRIDGE TOWN CODE BY THE ADOPTION OF REGULATIONS CONCERNING ADULT ORIENTED BUSINESSES

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. There is hereby added to the Breckenridge Town Code a new Chapter 8 of Title 9, to be entitled "Adult Oriented Businesses", which shall read in its entirety as follows:

CHAPTER 8

ADULT ORIENTED BUSINESSES

SECTION:

- 9-8-1: Legislative Intent
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**9-8-1: Legislative Intent:** It is the intent and purpose of this Chapter to regulate the time, place, and manner in which adult entertainment is presented in adult oriented businesses; to promote the health, safety, and general welfare of the citizens of the Town; and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult businesses within the Town. It is not the purpose of this Chapter to prohibit adult entertainment or to curtail constitutionally protected freedom of expression.

**9-8-2: Findings Of Fact:** The Town Council finds:

A. Regulation of adult businesses furthers substantial governmental interests and is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity has included prostitution, narcotics and liquor law violations, violent crimes against persons, and property crimes.

B. Adult businesses are frequently used for unlawful and unhealthful sexual activities, including prostitution and sexual liaisons of a casual nature.

C. The concern over sexually transmitted diseases, including AIDS, is a legitimate health concern of the Town which demands reasonable regulation of adult businesses in order to protect the health and well-being of the citizens.

D. Adult businesses have a deleterious effect on both neighboring businesses and surrounding residential areas causing an increase in crime and a decrease in property values.

E. It is recognized that adult businesses have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area.

F. The Town Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizens; to preserve the quality of life; to preserve the property values and character of surrounding neighborhoods; to deter the spread of urban blight; and to protect the citizens from increased crime.

G. It is necessary to have a manager on the premises of adult businesses at all times when such establishments are offering adult entertainment so that there will be an individual responsible for the overall operation of the establishment, including actions of patrons, entertainers and other employees.

H. The license fees required hereinafter are necessary as nominal fees designed to help defray the substantial expenses incurred by the Town in regulating adult businesses.

I. Restricted hours of operation will further prevent the adverse secondary effects of adult businesses.

J. Locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens and thus certain additional requirements with respect to the licensing and operation of adult businesses are in the public interest.

**9-8-3: Definitions:** For the purposes of this Chapter, the words and phrases used herein, unless the context otherwise indicates, shall have the following meaning:

**ADULT ARCADE** Any commercial establishment to which the public is permitted or invited where, for any form of consideration, one or more still or motion picture projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons per machine at any one time, are used to regularly show films, motion pictures, video cassettes, slides, or other photographic reproductions depicting actual acts of masturbation, sexual intercourse, copulation, sodomy or displaying human genitals in a state of sexual stimulation, arousal, or tumescence, or depicting excretory functions as a part of or in connection with any of the activities set forth in this definition.

**ADULT BOOKSTORE, ADULT NOVELTY STORE, OR ADULT VIDEO STORE** A commercial establishment which devotes at least fifty percent (50%) of its stock-in-trade or interior floor space to, or receives at least fifty percent (50%) of its revenues from, the sale, rental or viewing (for any form of consideration) of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which are intended to be read, viewed or used outside the premises of the commercial establishment.

**ADULT BUSINESS** An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, or sexual encounter center.

**ADULT CABARET** A nightclub, bar, restaurant, concert hall, auditorium, or other commercial establishment which regularly features live adult entertainment.

**ADULT ENTERTAINMENT** Any exhibition, display, or dance which involves the exposure to view of any portion of the female breast below the top of the areola, male genitals, female genitals, or the pubic hair, anus, or cleft of the buttocks of any person or male genitals in a discernibly turgid state even if completely and opaquely covered.

**ADULT MOTEL** A motel, hotel or similar commercial establishment which offers public accommodations, for any form of consideration, and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical area" and which advertises the availability of the sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, and offers a sleeping room for rent for a period of time less than five (5) hours.

ADULT MOTION PICTURE THEATER	Any commercial establishment to which the public is permitted or invited, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown depicting actual acts of masturbation, sexual intercourse, oral copulation, sodomy or displaying human genitals in a state of sexual stimulation, arousal, or tumescence, or depicting excretory functions as part of or in connection with any of the activities set forth in this definition. Any establishment meeting the definition of an adult arcade is not an adult motion picture theater.
CHILD CARE FACILITY	A commercial establishment for daily care or instruction of children.
CHURCH	Any institution that people regularly attend to participate in or hold religious services, meetings, and other activities. The term "church" shall not carry a secular connotation and shall include buildings in which the religious services of any denomination are held.
LINGERIE MODELING	Private or group showings of lingerie that is modeled, but not at a one time residential private party, but in a place of business, for any form of consideration. Such lingerie reveals specified anatomical areas.
MANAGER'S STATION	A required area or areas, not exceeding 32 square feet of floor area, that provides an unobstructed view, by direct line of sight, of each area of the premises to which any patron is permitted, excluding restrooms.
MESSAGE PARLOR	An establishment or place primarily in the business of providing massage services, but not licensed pursuant to the Colorado Massage Parlor Code (Article 48.5 of Title 12, C.R.S.).
NUDITY OR A STATE OF NUDITY	The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.
OBSCENE	A performance that: <ul style="list-style-type: none"> <li>a. The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex; and</li> <li>b. Depicts or describes: <ul style="list-style-type: none"> <li>1. Patently offensive representations of ultimate sex acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or</li> <li>2. Patently offensive representations of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, or covered male genitals in a discernibly turgid state; and</li> </ul> </li> <li>c. Taken as a whole, lacks serious literary, artistic, political or scientific value.</li> </ul>
PATENTLY OFFENSIVE	So offensive on its face as to affront current community standards of tolerance.
PERFORMANCE	A play, motion picture, dance, or other exhibition performed before an audience.
PUBLIC PARK	Any area set aside by the Town for recreational use, open space or green belt areas, excluding officially designated trail corridors.
RESIDENTIAL PROPERTY	Any property located within the corporate limits of the Town which is devoted to a residential use as that term is defined in Section 9-1-5 of this Code.
SCHOOL	A facility that provides a curriculum of elementary and secondary academic instruction, including kindergartens, elementary schools, middle schools, junior high schools, and high schools.

SEMI-NUDE	A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
SEXUAL ENCOUNTER CENTER	A business or commercial enterprise that regularly offers, for any form of consideration, activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude. This definition does not apply to any actions in compliance with any treatment or examination of another person for a bona fide medical purpose when such treatment or examination is conducted in a manner substantially consistent with reasonable medical practices, or to bona fide private parties not open to the general public.
SPECIFIED ANATOMICAL AREAS	(1) less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the areola; or (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.
SPECIFIED SEXUAL ACTIVITIES	(1) human genitals in a state of sexual stimulation or arousal; (2) acts of human masturbation, sexual intercourse or sodomy; and (3) fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

**9-8-4: Location Of Adult Businesses:**

A. It shall be unlawful to operate or cause to be operated an adult business in any location other than a Town Land Use District where commercial uses are recommended in the Land Use District Guide.

B. It shall be unlawful to operate or cause to be operated an adult business within 750 feet of:

1. A church;
2. A school or child care facility;
3. A public park; or
4. A residential property.

C. It shall be unlawful to cause or permit the operation of an adult business within 750 feet of another adult business or a massage parlor as defined by this Chapter. The distance between any two such businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which the adult business is located.

D. It shall be unlawful to cause or permit the operation, or maintenance of more than one adult business in the same building, structure, or portion thereof.

E. For the purpose of Paragraph B of this Section, the distance between an adult business and the premises of a church, school, child care facility, public park, or residential property, without regard to intervening structures, objects or Town limits, is from the closest exterior wall of the structure in which the adult business is located to the property line of such uses.

F. Any adult business lawfully operating on the effective date of this Chapter that is in violation of Paragraphs B through E, inclusive, of this Section shall be allowed to continue operating for an amortization period of six months. Six months after this Chapter becomes effective, all adult businesses must comply with this Section and all other provisions of this Chapter.

G. An adult business lawfully operating is not rendered a nonconforming use by the subsequent location of a church, school, child care facility, public park, or residential property within 750 feet of the adult business; provided however, if the adult business ceases operation for a period of 30 days or more regardless of any intent to resume operation, it may not recommence operation in that location.

H. Except for the amortization period set forth in Paragraph F, above, each day of operation in violation of any provision of this Chapter shall constitute a separate offense.

**9-8-5: License Required - Fee:**

A. No person shall conduct an adult business within the Town without first having obtained a Type A or Type B adult business license. The annual fee for a Type A adult business license shall be One Thousand Dollars (\$1,000.00). The annual fee for a Type B adult business license shall be Two Thousand Dollars (\$2,000.00).

B. A Type A adult business license shall be required for all adult businesses where no fermented malt beverages or any malt, vinous, or spirituous liquors are dispensed, consumed or sold.

C. A Type B adult business license shall be required for all establishments conducting an adult business where fermented malt beverages or any malt, vinous, or spirituous liquors are dispensed, consumed or sold. Any such establishment shall also comply with all applicable requirements of Title 12, Article 46 or Article 47, C.R.S., the applicable regulations issued thereunder, and Title 6 of the Breckenridge Town Code.

D. In the event an application for an adult business license is withdrawn or denied, the license fee shall be refunded in full to the applicant.

**9-8-6: License Application:**

A. All applicants for an adult business license shall file an application for such license with the Town Clerk on forms to be provided by the Town Clerk. Each (i) individual applicant, (ii) general partner of a partnership, (iii) manager or, if none, member of a limited liability entity, (iv) officer or director of a corporate applicant, and (v) all managers of the proposed adult business, shall be named in each application form, and each of them shall be photographed and fingerprinted by the Breckenridge Police Department.

B. The completed application shall contain the following information and shall be accompanied by the following documents:

1. If the applicant is:
  - a. an individual, the individual shall state his or her legal name and any aliases and submit satisfactory proof that he or she is twenty-one years of age and date of birth;
  - b. a partnership, the partnership shall state its complete name, and the names of all general partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
  - c. a corporation, or limited liability entity, the corporation or limited liability entity shall state its complete name, the date of its incorporation or organization, evidence that the corporation or limited liability entity is in good standing under the statutes of the State of Colorado, or in the case of a foreign corporation or limited liability entity, evidence that it is currently authorized to do business in the State of Colorado, the names and capacity of all officers and directors of a corporate applicant, or all managers or, if none, members of a limited liability applicant, of the registered agent and the address of the registered office for service of process.
2. Whether the applicant or any other individual listed pursuant to Paragraph A of this Section has had a previous adult business license under this Chapter or from another municipality or county that was denied, suspended or revoked, including the name and location of the adult business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or any other individuals listed pursuant to Paragraph A of this Section has been a general partner in a partnership, a member or manager of a limited liability entity, or an officer or director of a corporation that is permitted under this Chapter whose license has previously been denied, suspended or revoked, including the name and location of the adult business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation.
3. Whether the applicant or any other individual listed pursuant to Paragraph A of this Section holds any other license under this Chapter or holds a license issued under an adult business ordinance or regulation from another municipality or county and, if so, the names and locations of such other permitted businesses.
4. Whether the applicant or any other individual listed pursuant to Paragraph A of this Section has been convicted of or pleaded nolo contendere to any crime involving pandering, prostitution, obscenity, or any crime, that is connected with operating another sexually oriented business, in any jurisdiction, within five (5) years from the date of conviction to the date of the application; and, if so, the crime involved, the date of conviction, and the place of conviction.

5. The location of the proposed adult business, including a legal description of the property, street address, and telephone and fax numbers if any.
6. Proof of the applicant's ownership or other right to possession of the premises wherein the adult business is proposed to be conducted.
7. The applicant's mailing address and residential address.
8. The applicant's driver's license number, social security number, and the applicant's federally issued tax identification number, if any.
9. A floor plan of the licensed premises which specifies the location and dimensions of the manager's station(s) and demonstrates that there is an unobstructed view from at least one of the manager's station(s) of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. The floor plan shall designate those rooms or other areas of the premises where patrons are not permitted and shall also designate the use of each room or other area of the premises. The floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. The diagram shall designate the place at which the license will be conspicuously posted and the location of any stage. A floor plan is not required of a licensed premises of an adult motel.
10. A current certificate of occupancy for the premises proposed to be licensed.
11. A straight-line drawing prepared, within 30 days prior to the application, by a licensed land surveyor in Colorado depicting the property lines and the structures containing any adult business or massage parlor within 750 feet of the closest exterior wall of the structure in which the applicant business will be located, and also depicting the property line of any church, school, child care facility, public park, and residential property located within 750 feet from the closest exterior wall of the structure in which the applicant's business will be located.
12. Evidence from the Community Development Department that the proposed location of such business complies with the locational requirements of Section 9-8-4 of this Chapter.

C. If the applicant is an individual, he or she must sign the application for a license. If the applicant is a general partnership, all partners must sign the application. If the applicant is a limited partnership, all general partner must sign the application. If the applicant is a corporation, the president or vice-president must sign the application. If the applicant is a limited liability company, all managers or, if none, all member must sign the application.

D. In the event that the Town Clerk determines that the applicant has improperly completed the application, the applicant shall be promptly notified of such fact and allowed ten days to properly complete the application. The time period for granting or denying a license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application. For the purposes of this Chapter, the date the Town Clerk accepts an application which is complete in every detail, and for which the application investigation required by Section 9-8-8 has been completed, shall be the date the application is considered filed with the Town Clerk.

E. An applicant for a license under this Chapter shall have a continuing duty to promptly supplement application information required by this Section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within 30 days from the date of such change, by supplementing the application on file with the Town Clerk, shall be grounds for denial of an adult license (if such license has not been issued) or suspension or revocation of an adult license.

**9-8-7: Application Fee:** Each applicant, whether an individual, partnership, limited liability entity or corporation, shall pay an application fee of Two Hundred Fifty Dollars (\$250.00) at the time of filing an application. Such application fee shall be nonrefundable.

**9-8-8: Investigation:**

A. On receipt of a properly completed application, together with all information required in connection therewith, and the payment of the application and license fee, the Town Clerk shall transmit photocopies of the application to the Breckenridge Police Department and the Building Official for investigation.

B. The Breckenridge Police Department shall be responsible for fingerprints and photographs and for investigation of the background of each individual listed in an application pursuant to Section 9-8-6(A). The investigation conducted by the Breckenridge Police Department shall verify the accuracy of all information required by Section 9-8-6. Each applicant shall pay a nonrefundable investigation fee at the time the application is filed in the amount then charged by the Colorado Department of Public Safety for each person who will be investigated. At the conclusion of its investigation, the Police Department shall indicate on the photocopy of the application whether the required information has been verified, date it, and sign it.

C. The Building Official shall be responsible for ascertaining whether the application is in compliance with applicable building codes and ordinances. At the conclusion of its investigation, the Building Official shall indicate on the photocopy of the application whether the application is in compliance, date it, sign it, and in the event of noncompliance, state the reasons therefor.

D. After its investigation, each department shall immediately return the photocopy of the application to the Town Clerk.

**9-8-9: Action Upon License:**

A. The application shall be approved or denied by the Town Clerk within 60 days of the date the application is filed with and accepted as complete by the Town Clerk. The Town Clerk shall deny a license if:

1. Any individual applicant is under the age of twenty-one years;
2. The applicant has made a false statement upon the application or gave false information in connection with an application;
3. Any individual listed in the application pursuant to Section 9-8-6(A) has had an adult business license revoked or suspended any where within the State of Colorado within one year prior to the application;
4. The applicant has operated an adult business which was determined to be a public nuisance under state law, the Breckenridge Town Code or other municipal ordinance or law within one year prior to the application;
5. A corporate or limited liability entity applicant is not in good standing or authorized to do business in the State of Colorado;
6. The applicant is overdue in payment to the Town of taxes, fees, fines, or penalties assessed against or imposed against the applicant in relation to an adult business;
7. An applicant is in violation of or is not in compliance with any of the provisions of this Chapter; or
8. An applicant or any other individual listed pursuant to Section 9-8-6 has been convicted of or pleaded nolo contendere to any crime involving pandering, prostitution, obscenity, or any other crime that is connected with operating another sexually oriented business, in any jurisdiction, within five (5) years from the date of the conviction to the date of the application.

B. An application for a license under this Chapter which is not acted upon by the Town Clerk within 60 days after the application is filed with and accepted as complete by the Town Clerk shall be deemed to have been approved, and the requested license shall be issued.

C. In the event that the Town Clerk denies a license, the Town Clerk shall make written findings of fact stating the reasons for the denial and a copy of such decision shall be sent by certified mail to the applicant at the address shown in the application within three days after denial. An applicant shall have the right to appeal the denial at a hearing before the Town Council, provided that written request for such a hearing is made to the Town Manager within 10 days following the date of the denial of the license by the Town Clerk. Notice of the appeal hearing shall be mailed to the applicant at the address shown on the application at least 5 days prior to the hearing. The appeal hearing shall be heard at the next regular Town Council meeting occurring at least 10 days after the filing of the request for hearing with the Town Manager. Review by the Town Council shall be a de novo hearing.

D. At an appeal hearing, the Town Council shall hear such statements and consider such evidence as the Town Clerk, Police Department or other enforcement officers, the applicant, other party in interest, or any other witness shall offer which is relevant to the denial of the license application by the Town Clerk.

E. At an appeal hearing, the applicant may be represented by an attorney of the applicant's choice, at the applicant's own expense. The appeal hearing may be informal, and the strict rules of evidence shall not apply.

F. If the Town Council determines that the applicant is ineligible for a license under Section 9-8-9(A), it shall issue an order denying the application within 30 days after the hearing is concluded, based on findings of fact. A copy of the order shall be mailed by certified mail to the

applicant at the address on the application within 3 days of the adoption of such order. If the application is approved by the Town Council, the requested license shall be issued as provided in this Chapter.

G. Any order made pursuant to Paragraph F, above, shall be a final decision and may be appealed to the District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. Failure of an applicant to timely appeal said order constitutes a waiver of any right the applicant may otherwise have to contest the denial of the applicant's license application.

H. No license shall be issued by the Town Clerk after approval of an application until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the provisions of this Chapter and all applicable building and fire code regulations, and then only after inspection of the premises has been made by the Police and/or Building Official to determine that the applicant has complied with the plans and specifications submitted upon the application. Such inspection of the premises shall be made within ten days after the Town Clerk receives written notification from the applicant that the premises are in compliance with the submitted plans and specifications. If the licensed location has been inactive, without good cause, for at least one year, or if the building has not been constructed and placed in operation within two years after approval of the license application, or construction of the building has not commenced within one year after such approval, the Town Clerk, in the Town Clerk's discretion, may revoke or elect not to issue or renew the license.

**9-8-10: Term Of License:** All licenses granted pursuant to this Chapter shall be for a term of one year. Said term shall commence on January 1st of each year and terminate upon December 31 of the same year. Applications for a license filed at any other time during the year shall be treated the same as if they were filed January 1st of that year and shall terminate on December 31 of that same year, and no proration shall be permitted.

**9-8-11: License Renewal:** Renewal of an existing license granted pursuant to this Chapter may be had by payment of the annual licensing fee as provided in Section 9-8-5 and filing of a renewal application with the Town Clerk not less than 45 days prior to the date of expiration.

**9-8-12: Suspension Or Revocation Of License:**

A. The Town Council may suspend a license for a period of not to exceed six months or revoke any license granted pursuant to this Chapter upon a finding of any of the following factors:

1. That repeated disturbances of the public peace have occurred within the licensed establishment or upon any parking areas, sidewalks, access ways or grounds within the neighborhood of the licensed establishment involving patrons, employees, or the licensee;
2. That the licensee or any employee thereof has illegally offered for sale or illegally allowed to be consumed or possessed upon the licensed premises, or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises, narcotics or dangerous drugs or fermented malt beverages or any malt, vinous or spirituous liquors;
3. That the licensee or manager or his or her designee has not been present upon the licensed premises at all times that adult entertainment is being provided;
4. That adult entertainment was offered at the licensed establishment during hours prohibited by Section 9-8-15.
5. That the licensee, manager, or an employee of the licensed establishment has allowed a patron to engage in a public display of indecency in violation of Section 9-8-16 of this Code or has allowed a patron or employee to engage in an act of prostitution or negotiation for an act of prostitution within the licensed establishment or upon any parking areas, sidewalks, access ways, or grounds immediately adjacent to the licensed establishment, when the licensee, manager, or employee knew or should have known such displays or acts were taking place.
6. That the licensee or manager made a false statement or gave false information in connection with an application for a license or a renewal of a license;
7. That the licensee, manager, or employee of the licensed establishment violated or permitted a violation of any provision of this Chapter, including the Standards of Conduct set out in Section 9-8-16;



8. That the licensee, manager, or any employee of the licensed establishment is under the age of twenty-one years;
9. That the licensee, in the case of a corporation or limited liability entity, is not in good standing or authorized to do business in the State of Colorado.
10. That the licensee, manager or an employee of the licensed establishment knowingly operated the adult business during a period of time when the adult business license was suspended;
11. That the licensee is delinquent in payment to the Town or other taxing entity of any taxes or fees past due related to the operation of the licensed establishment;
12. That the licensee, manager, or an employee of the licensed establishment has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, or masturbation to occur within the licensed premises;
13. That a licensee or any other individual listed pursuant to Section 9-8-6(A) has been convicted of or pleaded nolo contendere to any crime involving pandering, prostitution, obscenity, or any other crime that is connected with operating another sexually oriented business, in any jurisdiction, within five (5) years from the date of the conviction to the date of the application; or
14. On two or more occasions within a twelve (12) month period, a person or persons committed a crime, as specified in Subparagraph 13, above, for which a conviction or plea of nolo contendere has been obtained, and the person or persons were employees of the licensed establishment at the time the offenses were committed.
15. That the licensee, manager or an employee of the licensed establishment has refused to allow an authorized inspection of the licensed premises.

B. In determining the action to be taken as provided in this Section, the Town Council shall consider the following aggravating and mitigating circumstances:

1. Whether the license has been previously suspended or revoked.
2. Whether the licensee was warned that the conduct involved could lead to a suspension or revocation.
3. Whether the cause for suspension or revocation involves one or several violations.
4. Whether the violation(s) are technical or substantive in nature.
5. The extent to which the licensee, licensee's agents and employees, as opposed to patrons, were involved in the violation(s).
6. The extent to which the licensee or licensee's employees had knowledge of the violation(s).
7. Any corrective or remedial action the licensee has taken to prevent similar violation(s) in the future.
8. Whether the violation(s) involved the commission of a crime, and if so, the degree of felony or misdemeanor involved.
9. The extent to which the violation(s) caused personal injuries or property damage.
10. Whether the licensee has paid damages or made restitution to any person or entity damaged by the violation(s).
11. The extent to which the violation(s) posed a significant risk to the health, safety and welfare of persons on or off of the licensed premises.
12. The length of time over which the violation(s) extended.
13. The extent to which the licensee or licensee's employees realized a financial gain from the violation(s).

14. The number of employees, patrons, or both involved in the violation(s).
15. The nature and extent of enforcement action taken by the Town or any law enforcement to detect the violation(s).
16. With respect to an adult business which presents live, nude entertainment, the involvement of any persons under twenty one (21) years of age in the violation(s).
17. The extent to which the licensee or licensee's employees have attempted to cover up the violation(s), destroy evidence or otherwise hinder the investigation and detection of the violation(s).
18. The extent to which the licensee and licensee's employees have acted in good faith.

C. Nothing in this Chapter shall prohibit the Town from taking any other enforcement action provided for by the Breckenridge Town Code, the laws of the State of Colorado or of the United States.

D. Licensee shall be entitled to a hearing before the Town Council if the Town seeks to suspend or revoke an adult business license based on a violation of this Chapter.

E. The following procedures shall be followed with respect to an action to suspend or revoke an adult business license:

1. When there is probable cause to believe that a licensee has violated or permitted a violation of this Chapter to occur in or near the licensed establishment, a written complaint shall be filed with the Town Manager or his or her designee setting forth the circumstances of the violation.
2. The Town Manager or his or her designee shall provide a copy of the complaint to the licensee, together with notice to appear before the Town Council for the purpose of a hearing on a specified date to show cause why the licensee's license should not be suspended or revoked.
3. If the Town Council determines that a violation did occur, the Town Council shall issue an order suspending or revoking the license within 30 days after the hearing is concluded, based on the findings of fact. A copy of the order shall be mailed by certified mail to the licensee at the address on the license not later than 10 days after such order is issued.

F. In the event of suspension, revocation, or cessation of business, no portion of the license fee shall be refunded.

G. When a license has been revoked, the revocation shall continue for one year, and the licensee shall not be issued an adult business license for one year from the date on which revocation became effective. A new application shall be required at that time.

**9-8-13: Display - Transferability - Change Of Ownership - Change Of Entity Structure:**

A. Any adult business license issued pursuant to the terms of this Chapter shall be prominently displayed at all times upon the premises for which the license was issued.

B. Licenses issued under this Chapter shall not be transferable except as provided herein. Any change in the general partners of a partnership, the managers or, if none, members of a limited liability entity, or in the officers or directors of a corporate licensee holding an adult business license shall result in termination of the license of the partnership, limited liability entity or corporation, unless such licensee within thirty days of any such change files a written notice of such change accompanied by the application fee and an investigation fee as required by Sections 9-8-7 and 9-8-8(B). Any such change shall be reported on forms provided by the Town Clerk and shall require the names of all new general partners, new managers or, if none, members of a limited liability entity, or new officers and directors of a corporate licensee, and the information with respect to such persons described in Section 9-8-6. Approval or denial by the Town Clerk of such transfer shall be upon the same terms as provided for in this Chapter for the approval or denial of an adult business license.

C. When a license has been issued to a husband and wife or to general or limited partnership, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license.

D. Each license issued under this Chapter is separate and distinct, and no person shall exercise any of the privileges granted under any license other than the license which he, she or it holds. A separate license shall be issued for each specific business or business entity and each geographical location.

**9-8-14: Manager - Change Of Manager:**

A. registered manager or his or her designee shall be on the premises of an adult business at all times that adult entertainment is being provided. It shall be unlawful for any person to work as a manager of an adult business without first registering with the Town Clerk. The registration form shall require the applicant to provide his or her legal name and any aliases, home address, telephone number, and satisfactory proof that he or she is twenty-one years of age.

B. In the event a licensee changes the manager of an adult business, the licensee shall report such change and register the new manager on forms provided by the Town Clerk within ten days of such change.

**9-8-15: Time Limits For Entertainment:**

A. No adult entertainment shall be offered or provided in the following types of adult businesses at the following days and times:

1. Type A: Prior to 12:00 noon or later than 12:00 midnight, or anytime on a Sunday.
2. Type B: Prior to 12:00 noon or later than 2:00 a.m. of the following day, or between 2:00 a.m. and noon on a Sunday.

B. Massage parlors may be open for business only from 11:00 a.m. to 9:00 p.m.

**9-8-16: Standards Of Conduct:**

A. The following standards of conduct must be adhered to by employees of any adult business which offers, conducts or maintains live adult entertainment:

1. No employee or entertainer mingling with the patrons or serving food or drinks shall be unclothed or in such attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals or display male genitals in a discernibly turgid state even if completely and opaquely covered.
2. No employee or entertainer shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any person.
3. No employee or entertainer shall wear or use any device or covering exposed to view, which simulates the breasts, genitals, anus, pubic hair or any portion thereof.
4. No employee or entertainer shall be unclothed or in such attire, costume, or clothing so as to expose any portion of the female breasts below the top of the areola, or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals of any person, except upon the stage at least eighteen inches above the immediate floor level and removed at least six feet from the nearest patron or behind a solid, uninterrupted physical barrier which completely separates the entertainer from any patrons. This barrier must be a minimum of 1/4 inches thick and have no openings between the entertainer and any patrons. The stage shall be fixed and immovable.
5. No employee or entertainer shall perform while nude or semi-nude any obscene acts or obscene acts which simulate:
  - a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law; or
  - b. The touching, caressing or fondling of the breasts, buttocks, anus, or genitals.
6. No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this Section.

7. There shall be posted and conspicuously displayed in the common areas of each place offering live adult entertainment a list of food and drink prices.
8. Any tips for entertainers shall be placed by a patron into a tip box which is permanently affixed in the adult business and no tip may be handed directly to an entertainer. A licensee that desires to provide for such tips from its patrons shall establish one or more containers to receive tips. Any physical contact between a patron and an entertainer is strictly prohibited.
9. An adult business that provides tip boxes shall conspicuously display in the common area of the premises one or more signs in letters at least one (1) inch high to read as follows:  

"ADULT ENTERTAINMENT IS REGULATED BY THE TOWN OF BRECKENRIDGE. All tips are to be placed in tip box and not handed directly to the entertainer. Any physical contact between a patron and an entertainer is strictly prohibited."
10. No adult entertainment occurring on the premises shall be visible at any time from outside the premises.

B. Any licensee who offers, conducts, or maintains live adult entertainment or an adult arcade which exhibits in a viewing room of less than 150 square feet of floor space, a film, videocassette, or other video reproduction, shall comply with the following requirements in addition to those set forth in Paragraph A:

1. It is the duty of the licensee of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
2. It is the duty of the licensee and operator of the premises to ensure that any doors to public areas on the premises remain unlocked during business hours.
3. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two or more manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purposes, excluding restrooms, from at least one of the manager's stations. The view required in this Subparagraph must be by direct line of sight from the manager's station. A manager's station may not exceed 32 square feet of floor area.
4. No alteration to the configuration or location of a manager's station may be made without the prior approval of the Building Official.
5. It shall be the duty of the licensee, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in Subparagraph 3 remains unobstructed by any doors, curtains, drapes, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the license application filed pursuant to this Chapter.
6. No viewing room may be occupied by more than one person at any one time.
7. Viewing rooms must be separated from other viewing rooms by a solid, uninterrupted physical divider which is a minimum of 1/4 inch and which serves to prevent physical contact between patrons.

C. Nothing in this Section shall be construed to permit any act on the premises of a Type B adult business license in violation of Title 12, Article 46 or Article 47, C.R.S., or the Colorado Department of Revenue rules and regulations issued pursuant thereto.

**9-8-17: Age Restrictions:** Admission to an adult business which presents live, nude entertainment is restricted to persons of the age of twenty-one years or older during hours adult entertainment is being presented. This minimum age limitation also applies to any employees, agents, servants, or independent contractors working on the premises.

**9-8-18: Lighting Requirements:**

A. All off-street parking areas and premise entries of adult businesses shall be illuminated from dusk to closing hours of operation with a light system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the adult business to help ensure the personal safety of patrons and employees and to reduce the incidence of vandalism and other criminal conduct.

B. The premises of all adult businesses, except adult motion picture theaters, shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access to provide an illumination of not less than two (2) foot candle of light as measured at the floor level.

C. Adult motion picture theaters shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access to provide an illumination of not less than one (1) foot candle of light as measured at the floor level.

**9-8-19: Right Of Entry:** The application for an adult business license shall constitute the irrevocable consent of the licensee and the licensee's agents and employees to permit the Breckenridge Police Department or any other agent of the Town to conduct routine inspections of any licensed adult business during the hours the establishment is conducting business. Such inspections shall be conducted in a reasonable manner, and only as frequently as may be reasonably necessary.

**9-8-20: Exemptions:** It is an affirmative defense to prosecution under this Chapter that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

(a) by a proprietary school, licensed by the State of Colorado; a college, junior college, or university supported entirely or partly by taxation;

(b) by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(c) in a structure:

1. which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
2. where, in order to participate in a class, a student must enroll at least three days in advance of the class; or
3. where no more than one nude model is on the premises at any one time.

**9-8-21: Injunction:** The operation of an adult business in violation of the provisions of this Chapter may be enjoined by the Town in an action brought in a court of competent jurisdiction, including, but not limited to, the Town's Municipal Court pursuant to Section 1-8-10 of this Code.

**9-8-22: Severability.** Should any section, subsection, subdivision, paragraph, subparagraph, sentence, clause or phrase of this Chapter, or application thereof to any person or circumstance, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Chapter, or its application to any other person or circumstance, and, to this end, the provisions of this Chapter are declared to be severable.

Section 2. The introductory paragraph of Section 1-8-10 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

**1-8-10: CIVIL ACTIONS:** When a violation of the "Nuisance Ordinance" (Chapter 1 of Title 5), the building and technical codes (Chapter 1 of Title 8), the "Sign Code" (Chapter 2 of Title 8), and the "Land Use Development Regulations" (Chapters 1, 2, 3 and 7 of Title 9) or the "Adult Oriented Business Ordinance" (Chapter 8 of Title 9) is alleged to exist and has not been abated within any applicable time period provided by this Code, or when a violation of the "Sales Tax Ordinance" (Chapter 1 of Title 3) or the "Business and Occupational Licenses and Tax Ordinance" (Chapter 1 of Title 4) is alleged to exist:

Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 4. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

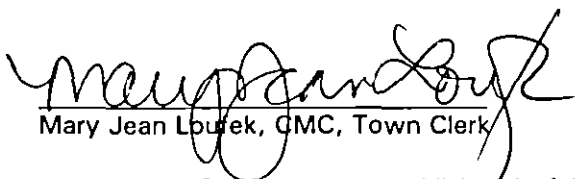
Section 5. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 6. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 13th day of August, 1996. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 27th day of August, 1996, at 7:30 P.M. or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, GMC, Town Clerk

  
Stephen C. West, Mayor

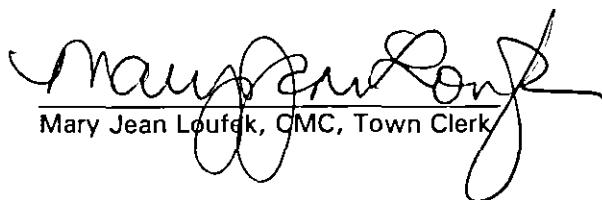
This Ordinance was published in full in The Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on August 21, 1996.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS AS FOLLOWS this 27th day of August, 1996.

A copy of this Ordinance is available for inspection in the office of the Town Clerk.

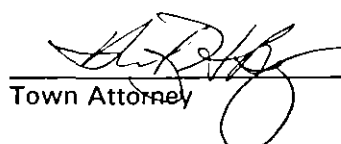
ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, GMC, Town Clerk

  
Stephen C. West, Mayor

APPROVED IN FORM

 8/27/96  
Town Attorney Date

This Ordinance was published by title with amendments in The Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on September 4, 1996.